

**The Criminal Investigation Function Needs to  
Improve Its Oversight During Implementation  
of the Webster Report Recommendations**

**June 2001**

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DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

INSPECTOR GENERAL  
for TAX  
ADMINISTRATION

June 29, 2001

MEMORANDUM FOR CHIEF, CRIMINAL INVESTIGATION

A handwritten signature in cursive script, reading "Pamela J. Gardiner".

FROM: Pamela J. Gardiner  
Deputy Inspector General for Audit

SUBJECT: Final Audit Report - The Criminal Investigation Function Needs to Improve Its Oversight During Implementation of the Webster Report Recommendations

This report presents the results of our review of the Criminal Investigation (CI) function's implementation of the Webster Report<sup>1</sup> recommendations. The objective of the review was to determine whether the CI function had implemented the 25 recommendations contained in the "Executive Summary" of the Webster Report.

In summary, we recommended that the CI function increase executive oversight on open action items and establish a process to monitor the effectiveness of the proposed corrective actions. We also recommended that the CI function require periodic reviews to ensure the consistent preparation of search warrant and risk assessment documentation by special agents. CI management agreed with the recommendations presented in this report and has implemented corrective action. Management's comments have been incorporated into the report where appropriate, and the full text of their comments is included as an appendix.

Copies of this report are also being sent to the Internal Revenue Service managers who are affected by the report recommendations. Please contact me at (202) 622-6510 if you have questions or Maurice S. Moody, Assistant Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs), at (202) 622-8500.

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<sup>1</sup> Review of the Internal Revenue Service's Criminal Investigation Division, also known as the Webster Report.

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## **Executive Summary**

In July 1998, the Commissioner of the Internal Revenue Service (IRS) appointed Judge William Webster to assemble a task force and perform an independent review of the Criminal Investigation (CI) function's operations. The CI Division Review Task Force (Webster Commission) focused on the following areas: the CI function's mission, methods of investigation, personnel-related issues, and organizational structure.

The Webster Commission completed the review and issued its report<sup>1</sup> in April 1999. The Commission determined that the CI function's focus had drifted from its primary mission of investigating potential violations of the federal internal revenue laws concerning legal source income.<sup>2</sup> The Commission made recommendations to strengthen and support the CI function in accomplishing its primary mission.<sup>3</sup> The IRS Commissioner concurred with the broad conclusions of the Webster Report, which included 25 basic recommendations in its "Executive Summary." In addition, the IRS Commissioner appointed a CI design team to perform further analysis and design work, particularly on the recommendations concerning organizational structure.

The objective of this audit was to determine if the CI function implemented the 25 basic recommendations contained in the "Executive Summary" of the Webster Report.

## **Results**

The CI function has completed a significant number of actions relating to the 25 basic recommendations reflected in the "Executive Summary" of the Webster Report. The CI function has also appointed a Modernization Executive with responsibility for ensuring the completion of all outstanding action items. The Modernization Executive has recognized the need to control this process and has begun to take steps to assess the status of the action items. The CI function must now ensure that sufficient controls are established to effectively monitor the completion of the remaining actions. Otherwise, the CI function will be at risk of not fulfilling the intent of the Webster Report recommendations, which include the need to give more focus to the CI function's primary mission of investigating violations of internal revenue laws concerning legal source income. The CI function needs to take additional steps to ensure that mission

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<sup>1</sup> *Review of the Internal Revenue Service's Criminal Investigation Division*, also known as the Webster Report.

<sup>2</sup> Legal Source Income is derived from legal industries or occupations.

<sup>3</sup> The CI function's primary mission is to investigate potential criminal violations of the federal internal revenue laws and related financial crimes.

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critical initiatives are successfully implemented and that special agents' search warrant activities are appropriately monitored.

### **Criminal Investigation Management Needs to Establish Controls to Monitor the Completion of Mission Critical Initiatives**

The CI function has not established an effective monitoring process to ensure appropriate actions are taken timely to resolve outstanding mission critical action items. The successful completion of the critical action items is essential for the CI function to accomplish its primary mission of investigating potential violations of federal internal revenue laws. Although the Chief, CI, has given oversight responsibility to the Modernization Executive, a formal monitoring process, which includes milestone and follow-up dates, has not yet been established.

We determined, and the responsible CI officials agreed, that the 25 basic Webster Report recommendations included 107 action items requiring their attention. We did not assess the status of action on seven Government Performance and Results Act of 1993 (GPRA)<sup>4</sup> action items because they are being addressed in a separate Treasury Inspector General for Tax Administration (TIGTA) audit.<sup>5</sup> For the remaining 100 items, the CI function has completed action on 63 and has taken several steps to address the other 37.

### **Criminal Investigation Management Needs to Monitor Special Agents' Search Warrant Activities**

The CI function needs to enhance its existing practices for ensuring special agents' search warrant activities are appropriately monitored. This process must be effective to ensure the special agents' use of search warrants is the least intrusive means necessary to obtain evidence. In November 2000, the CI function completed a review of search warrant documentation. It concluded that adequate documentation was not prepared to support the use of search warrants as the least intrusive means to obtain evidence and that the Risk Assessment Guide was often inadequately completed. The CI function has also not required periodic reviews to ensure the consistent preparation of search warrant and risk assessment documentation. Periodic reviews of search warrant documentation are essential to ensure that the CI function is not at risk of jeopardizing its criminal investigations.

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<sup>4</sup> Government Performance and Results Act of 1993 (GPRA), Pub. L. No. 103-62, 107 Stat. 285.

<sup>5</sup> The TIGTA is performing an audit entitled, "Review of the CI Function's Performance Measures."

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### **Summary of Recommendations**

The Chief, CI, should ensure that appropriate processes are developed to effectively monitor the successful completion of the corrective actions initiated in response to the Webster Report. The Chief, CI, also needs to establish a process to monitor the effectiveness of the actions taken. In addition, the Chief, CI, should require periodic reviews to ensure the consistent preparation of special agents' search warrant and risk assessment documentation. These reviews should ensure that appropriate documentation is maintained in the investigative administrative files.

Management's Response: CI management agreed with the recommendations presented in this report and has implemented corrective action. The CI Modernization Executive will continue oversight to ensure the desired results are achieved. The ongoing management processes developed and implemented by the CI function will be used to evaluate the effectiveness of the implementation of the Webster Report recommendations. The CI function and Criminal Tax Division<sup>6</sup> have implemented new management processes requiring detailed reviews and oversight of search warrants.

Management's complete response to the draft report is included as Appendix V.

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<sup>6</sup> The IRS Criminal Tax Division provides expert legal advice to special agents during all stages of their investigations.

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## Objective and Scope

*The overall objective of this review was to determine if the CI function implemented the 25 basic recommendations contained in the “Executive Summary” of the Webster Report.*

The overall objective of this review was to determine if the Criminal Investigation (CI) function implemented the 25 basic recommendations contained in the “Executive Summary” of the Webster Report.<sup>1</sup> We did not evaluate the effectiveness of the outcomes associated with the CI function’s corrective actions.

We reviewed the CI function’s documentation relating to actions taken to manage and implement the recommendations. We also discussed the implementation of the Webster Report recommendations with executives and managers in the CI National Headquarters, the Modernization Executive, the six Directors of Field Operations, and managers at the National Criminal Investigation Training Academy. Audit work was performed primarily in the National Headquarters and the office of the CI Modernization Executive from September 2000 through February 2001. This audit was performed in accordance with *Government Auditing Standards*.

Details of our audit objective, scope, and methodology are presented in Appendix I. Major contributors to this report are listed in Appendix II.

## Background

*The CI function is responsible for investigating potential criminal violations of the federal internal revenue laws and related financial crimes.*

The CI function is responsible for investigating potential criminal violations of the federal internal revenue laws and related financial crimes. In July 1998, the Commissioner of the Internal Revenue Service (IRS) appointed Judge William Webster to assemble a task force and perform an independent review of the CI function’s operations. The CI Division Review Task Force (Webster Commission) focused on the following areas:

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<sup>1</sup> *Review of the Internal Revenue Service’s Criminal Investigation Division*, also known as the Webster Report.

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*The Webster Commission determined that the CI function's focus had drifted from its primary mission of investigating potential violations of the federal internal revenue laws.*

the CI function's mission, methods of investigation, personnel-related issues, and organizational structure.

The Webster Commission completed the review and issued its report in April 1999. The Commission determined that the CI function's focus had drifted from its primary mission of investigating potential violations of the federal internal revenue laws concerning legal source income.<sup>2</sup> The Commission made recommendations to strengthen and support the CI function in the accomplishment of its primary mission. The Webster Report also recommended that the Commissioner appoint a design team to facilitate the effective implementation of the recommendations. The IRS Commissioner concurred with the broad conclusions of the Webster Report, which included 25 basic recommendations in its "Executive Summary." In addition, the IRS Commissioner appointed a CI design team to perform further analysis and design work, particularly on the recommendations concerning organizational structure.

### Results

*The CI function has completed a significant number of actions relating to the 25 basic recommendations reflected in the "Executive Summary" of the Webster Report.*

The CI function has completed a significant number of actions relating to the 25 basic recommendations reflected in the "Executive Summary" of the Webster Report. The CI function has also appointed a Modernization Executive with responsibility for ensuring the completion of all outstanding action items. The Modernization Executive has recognized the need to control this process and has begun to take steps to assess the status of the action items. The CI function must now ensure that sufficient controls are established to effectively monitor the completion of the remaining actions. Otherwise, the CI function will be at risk of not fulfilling the intent of the Webster Report recommendations.

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<sup>2</sup> Legal Source Income is derived from legal industries or occupations.



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The CI function needs to take additional steps to ensure:

- Mission critical initiatives are successfully implemented.
- Search warrant activities are appropriately monitored.

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### Criminal Investigation Management Needs to Establish Controls to Monitor the Completion of Mission Critical Initiatives

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*The CI function has not established a monitoring process to ensure that actions taken to resolve outstanding, critical action items are appropriate and timely.*

The CI function has not established an effective monitoring process to ensure appropriate actions are taken timely to resolve mission critical action items. The successful completion of the mission critical action items is essential for the CI function to accomplish its primary mission of investigating potential violations of the federal internal revenue laws concerning legal source income. Although the Chief, CI, has given oversight responsibility to the Modernization Executive, a formal monitoring process, which includes milestone and follow-up dates, has not yet been established.

We determined, and CI officials agreed, that the 25 basic Webster Report recommendations included 107 action items requiring their attention. We did not assess the status of seven Government Performance and Results Act of 1993 (GPRA)<sup>3</sup> action items because they are being addressed in a separate Treasury Inspector General for Tax Administration (TIGTA) audit.<sup>4</sup> Of the remaining 100 action items, 63 have been completed. The CI function has also taken several steps to address the 37 open action items. Appendix IV contains a listing of the 37 action items that are still open.

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<sup>3</sup> Government Performance and Results Act of 1993 (GPRA), Pub. L. No. 103-62, 107 Stat. 285.

<sup>4</sup> The TIGTA is performing an audit entitled, *Review of the CI Function's Performance Measures*.

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In our opinion, the CI function should take additional steps to ensure that:

- Action items affecting the CI function's ability to accomplish its mission are completed timely.
- Continual monitoring and feedback is provided to ensure the effectiveness of the corrective actions.

### **Key action items affecting the CI function's ability to accomplish its mission have not been completed timely**

The Webster Commission determined that the CI function needed to refocus its resources on its primary mission. The Commission recommended the CI function, along with the other IRS compliance functions, develop a compliance strategy based on rigorous empirical studies that consider local, national, and international noncompliance with the federal internal revenue laws. The compliance strategy would be used to focus the CI function's caseload and resources on promoting voluntary compliance.

*The CI function is operating without the framework of a current, functional compliance strategy.*

Initially, the IRS was required to develop a National Compliance Strategy to ensure resources were properly allocated to accomplish its mission. The divisions and functions were to be responsible for aligning their compliance strategies with the IRS' National Compliance Strategy. However, that vision has not been realized and the CI function is operating without the framework of a current, functional compliance strategy, which was cited by the TIGTA in a draft report recently submitted to the IRS for comment.<sup>5</sup> In our opinion, it is essential that this crucial recommendation be timely completed to ensure the CI function successfully shifts resources to investigate more legal source tax violations.<sup>6</sup>

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<sup>5</sup> Draft report entitled, *Review of the Effectiveness of Criminal Investigation's Strategic Planning Process*, issued in April 2001.

<sup>6</sup> Legal Source tax violations involve tax evasion occurring in a broad range of legal industries and occupations.

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*Although the CI function is working with the operating divisions, potential fraud cases are not always referred to the CI function, as reported by the TIGTA in a recently issued final report.*

The Webster Commission determined that the Examination, Collection, and CI functions must reinvigorate the Fraud Referral Program by identifying legal source tax violations. This entails establishing lines of communication among each function and making clear the CI function's commitment to tax enforcement. Although the CI function is working with the operating divisions, potential fraud cases are not always referred to the CI function. This condition was found during another TIGTA audit.<sup>7</sup> The other audit showed that 11 percent of closed Examination cases meeting the criteria to be referred as criminal fraud cases were not referred to the CI function. Timely referral of appropriate fraud cases to the CI function has been a longstanding concern for the Examination and Collection functions. In our opinion, without continued coordination among the operating functions, fraud cases may not be identified and timely referred to the CI function for investigation.

The CI function has taken some steps to reinvigorate the Fraud Referral Program, as recommended by the Webster Report. For example, the Chief, CI, has continually emphasized the importance of the operating divisions timely referring potential fraud issues to the CI function for criminal investigation. The Chief, CI, has also given presentations at the Small Business/Self-Employed Division and Large and Mid-Size Business Division meetings to encourage the development of fraud referrals.

On October 1, 2000, a pilot Lead Development Center (LDC), which is designed to develop investigative leads and support compliance efforts, became operational. The LDCs will be a major component of the Fraud Referral Program. The CI function plans to have six additional LDCs operational by the end of the fiscal year. Nonetheless, without appropriate executive oversight for this initiative, the CI function is at risk of

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<sup>7</sup> *More Consideration is Needed During Examination to Identify Fraud Issues and Refer Cases to Criminal Investigation* (Reference Number 2001-30-063, dated March 2001).

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not fully addressing the intent of this Webster recommendation.

### **Continual monitoring and feedback is needed to ensure the effectiveness of corrective actions**

The Webster Commission reviewed all aspects of the CI function's personnel policies and procedures. The Webster Commission recommended that the initial training of special agents include formal instruction in substantive tax law and that the CI function carefully monitor the new interactive case study method. The CI function has taken steps to ensure that new and experienced agents receive sufficient training to perform more tax-related investigations. It has also established a process to monitor the interactive case study method. For example, the CI function's training program was revised to include 398 hours, or 10 weeks, of substantive tax law. Upon completion of this training, each trainee, his/her manager, and on-the-job instructors complete a survey for use by CI management to evaluate the effectiveness of the training. We believe that continual monitoring and feedback is essential to ensure special agents are receiving adequate tax law training.

*We believe that continual monitoring and feedback is essential to ensure special agents are receiving adequate tax law training.*

The Webster Commission recommended that the period of time special agents are required to spend working CI-specific cases between task force assignments be long enough to make a significant contribution to the CI function and improve the special agents' tax investigation skills. However, the CI function has not implemented national guidelines on case assignments, the length of time special agents should be assigned to task forces, or the period of time between task force assignments. We believe that implementing national guidelines will allow the CI function to assign special agents to cases where they can make significant contributions to the CI function and improve their tax investigative skills.

*The CI function has not implemented national guidelines on case assignments, the length of time special agents should be assigned to task forces, or the period of time between task force assignments.*

The Webster Commission was concerned about the declining pool of special agents and recommended the IRS Commissioner take steps to address the issue. The IRS is engaged in a large-scale, multi-million dollar

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recruitment effort targeting several professional positions, including special agents. The projected losses of special agents through attrition and the number of new special agents hired are tracked and reported to the IRS Commissioner quarterly. We believe continued oversight of these efforts is essential to attract highly qualified and motivated individuals.

The Webster Commission recognized the need to allocate resources consistent with its tax enforcement mission and recommended rigorous empirical studies of noncompliance be performed to identify cases and deter noncompliance to reduce the tax gap. The CI function is working with the IRS' Office of Program Evaluation and Risk Analysis (OPERA) to identify areas of noncompliance and develop models for determining where special agents should be assigned. The OPERA expects to develop the models by April 2001. In our opinion, if the models are developed based on a reliable workload analysis, the CI function should be able to determine if resources are in the desired locations and, if necessary, concentrate on recruiting for those locations where they are needed.

### **Recommendations**

1. The Chief, CI, needs to increase executive oversight on open action items to ensure their timely completion.

Management's Response: The CI Modernization Executive will continue oversight to ensure the desired results are achieved. This executive reports directly to the Chief, CI, to guarantee appropriate management attention throughout CI.

2. The Chief, CI, should establish a process to monitor the effectiveness of the proposed corrective actions taken in response to the Webster Report recommendations.

Management's Response: The ongoing management processes developed and implemented by the CI function will be used to evaluate the effectiveness of the

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implementation of the Webster Report recommendations.

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### Criminal Investigation Management Needs to Monitor Special Agents' Search Warrant Activities

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*The CI function needs to enhance its process for ensuring special agents' search warrant activities are appropriately monitored.*

The CI function needs to enhance its existing practices to ensure special agents' search warrant activities are appropriately monitored. This process must be effective to ensure special agents' use of search warrants is the least intrusive means necessary to obtain evidence. The CI function has not required periodic reviews to ensure the consistent preparation of search warrant and risk assessment documentation.<sup>8</sup> Periodic reviews of search warrant documents are essential to ensure that the CI function is not at risk of jeopardizing its criminal investigations.

*Search warrants are used to obtain evidence of potential violation of the federal internal revenue laws under the CI function's jurisdiction.*

Search warrants are used to obtain evidence of potential violations of the federal internal revenue laws under the CI function's jurisdiction. To obtain a search warrant, law enforcement agencies must show that there are sufficient facts and circumstances to believe that a crime was or is being committed and the property subject to seizure is on the premises to be searched (probable cause). The IRS policy requires the CI function to determine whether the use of a search warrant is less intrusive than a wiretap or any other method used to obtain the evidence.

The Webster Commission reviewed the CI function's use of search warrants and concluded there was insufficient documentation that the CI function had consistently assessed whether the use of search warrants conformed to the IRS' policy of using the least intrusive means to obtain evidence. The Webster Commission

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<sup>8</sup> The special agent requesting a search warrant needs to prepare documentation assessing the risk associated with conducting a search.

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recommended that the CI function establish procedures for a thorough written evaluation on the use of search warrants, a written approval process with the Special Agent-in-Charge (SAC) as the approving official, and uniform classification of risks. In addition, the Webster Report recommended that the preparation of a post-operational memorandum identifying and quantifying the force actually employed during the execution of the search warrant be mandated and that a uniform policy for file maintenance be established.

The CI function took steps to address the concerns raised by the Webster Commission. For example, in November 2000, the CI function completed a review of search warrants issued between October 1, 1999, and February 29, 2000. The CI function concluded that adequate documentation was not prepared to support the use of search warrants as the least intrusive means to obtain the evidence, the Risk Assessment Guide was often inadequately completed, and use of the Post Enforcement Operation Summary Form was optional rather than mandatory. The Chief, CI, took immediate action to notify the CI executives and managers of the problems identified concerning the lack of documentation on intrusiveness and the minimizing of risk. To eliminate confusion, the Chief, CI, also issued instructions to the SACs making the use of the Post Enforcement Operation Summary Form mandatory. Without sufficient documentation, the CI function cannot ensure the IRS Commissioner or the public that its use of search warrants is the least intrusive means for obtaining evidence.

*We believe that, without sufficient documentation, the CI function cannot ensure the IRS Commissioner or the public that its use of search warrants is the least intrusive means for obtaining evidence.*

### Recommendation

3. The Chief, CI, should require periodic reviews to ensure the consistent preparation of special agents' search warrant and risk assessment documentation. These reviews should ensure that appropriate documentation is maintained in the investigative administrative files.

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Management's Response: The CI function and Criminal Tax Division<sup>9</sup> have implemented new management processes requiring detailed reviews and oversight of search warrants. Criminal Tax reviews all applications for search warrants for both legal and policy requirements. These reviews are documented in the administrative file.

### **Conclusion**

The CI function has completed a significant number of actions relating to the 25 basic recommendations reflected in the "Executive Summary" of the Webster Report. It has also appointed a Modernization Executive who is responsible for ensuring the completion of all outstanding action items. However, the CI function must ensure sufficient controls are established to effectively monitor the completion of the remaining action items. Without the establishment of sufficient controls, the CI function will be at risk of not fulfilling the intent of the Webster recommendations as well as the focus of its mission.

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<sup>9</sup> The IRS Criminal Tax Division provides expert legal advice to special agents during all stages of their investigations.



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### **Appendix I**

#### **Detailed Objective, Scope, and Methodology**

The overall objective of our review was to determine if the Criminal Investigation (CI) function implemented the 25 basic recommendations contained in the “Executive Summary” of the Webster Report.<sup>1</sup> Our specific objectives were to determine if the CI function provided adequate oversight to ensure the implementation of the recommendations and identify those recommendations not fully implemented and determine the actions necessary to ensure their implementation. To accomplish these objectives, we performed the following audit tests:

- I. To determine whether the CI function provided adequate oversight to ensure the implementation of the recommendations, we reviewed documentation and interviewed executives and managers in CI headquarters in the National Headquarters, the Modernization Executive, the six Directors of Field Operations (DFO), and managers at the National Criminal Investigation Training Academy (NCITA). We determined whether the CI function:
  - A. Assigned an executive responsibility for ensuring the recommendations in the Webster Report were implemented.
  - B. Developed and put into practice a process to manage the implementation of the recommendations.
- II. To identify those recommendations not fully implemented and determine the actions necessary to ensure their implementation, we:
  - A. Reviewed available documentation pertaining to the identification and status of the recommendations and interviewed CI executives and managers in the National Headquarters, the Modernization Executive, the six DFOs, and managers at the NCITA. We determined:
    1. The total number of recommendations in the Webster Report and the responsible functions.
    2. The status of each recommendation (implemented, being implemented, or not implemented).
      - a. Consistent with the Webster Report recommendation.

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<sup>1</sup> *Review of the Internal Revenue Service’s Criminal Investigation Division*, also known as the Webster Report.

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- b. Evaluated by the CI function to determine whether the implementation was effective (where appropriate).
- 3. On recommendations that were being implemented, whether:
  - a. Each implementation was consistent with the Webster Report recommendation.
  - b. Appropriate executives and/or managers were aware of the status of the implementation of the recommendations.
- 4. On recommendations that were not implemented:
  - a. Why each recommendation was not implemented.
  - b. Whether appropriate executives and/or managers were advised and had approved decisions to not implement recommendations.
  - c. Whether other actions were needed because the recommendation was not implemented.

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**Appendix II**

**Major Contributors to This Report**

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**Appendix III**

**Report Distribution List**

Commissioner N:C  
Chief Counsel CC  
Division Counsel/Associate Chief Counsel (Criminal Tax) CC:CT  
Deputy Chief, Criminal Investigation CI  
Modernization Executive, Criminal Investigation CI:M  
Director, Legislative Affairs CL:LA  
Director, Office of Program Evaluation and Risk Analysis N:ADC:R:O  
National Taxpayer Advocate TA  
Office of Management Controls N:CFO:F:M  
GAO and TIGTA Liaison CI:S:PS

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### **Appendix IV**

#### **Open Action Items Relating to the Basic Recommendations in the Webster Report<sup>1</sup>**

##### **Critical Action Items**

1. The Criminal Investigation (CI) function, in conjunction with other Internal Revenue Service (IRS) compliance components, should develop a compliance strategy that will enable it to determine how best to allocate its resources consistent with its tax enforcement mission. Rigorous empirical studies of noncompliance will enable the CI function to identify cases to deter noncompliance and thereby reduce the tax gap.
2. The Examination, Collection, and CI functions must reinvigorate the Fraud Referral Program.
3. The CI special agents should produce thorough written evaluations as to why they are seeking a search warrant.
4. The IRS Commissioner should address the CI function's declining pool of special agents.
5. The initial special agent training should include substantive tax law training. The CI function should monitor the new interactive case study method being used to ensure it adequately trains special agents to fulfill all their job responsibilities.
6. The CI function should limit the length of time special agents are assigned to specialized task forces.
7. The CI function should monitor the new disciplinary processes carefully to ensure that the prior problems are eliminated and that there is uniform and fair treatment of all employees.
8. The CI function should focus its caseload more specifically on cases that will promote voluntary compliance with tax laws.
9. All three compliance components (Examination, Collection, and CI functions) must provide fraud referral training for their agents and officers, with particular emphasis on employees in the civil components learning what factors make an acceptable referral.

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<sup>1</sup> *Review of the Internal Revenue Service's Criminal Investigation Division*, also known as the Webster Report.

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10. The CI function should choose its investigations based on the facts of each case and how the case fits within the overall compliance strategy.
11. A written approval process should be adopted for all enforcement operations.
12. The CI function should have written guidelines to direct special agents on how to uniformly classify risks in executing a search warrant.
13. The post-operational memorandum<sup>2</sup> should be stressed to identify and quantify the force actually employed in search warrant execution.
14. The CI function should mandate that the post-operational memorandum be required as a national policy and be specified in the Internal Revenue Manual (IRM). This document should be made part of the permanent case file.
15. All search warrant documents should be evaluated at the national level after execution on a pilot basis for at least 3 months.
16. Strict adherence to search warrant procedures should become a significant factor in the District Peer Review and required in the Special Agent-in-Charge's (SAC) annual evaluation.
17. The CI function should establish a uniform policy for search warrant file maintenance that includes a list of mandatory documents and the appropriate organization of those documents.
18. The CI function should make the meaningful implementation of On-the-Job Training (OJT) part of the annual evaluation of all CI Division Chiefs.
19. The CI managers should assign special agents a variety of cases so agents will be able to improve their skills and progress in their careers.
20. The time agents are required to spend working CI specific cases between task force assignments should be long enough for the agents to make significant contributions to the CI function and refine and hone their skills in tax investigations.
21. Research should analyze not only relevant national information but also each district's data to target localized compliance problems.
22. All search warrants should be approved by the SACs and weigh heavily in their annual performance evaluation.
23. International case development should be studied to determine how it would contribute to the CI mission.

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<sup>2</sup> Upon completion of the execution of a search warrant, a memorandum identifying the amount of force used or stress associated with executing the search warrant is prepared.

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24. Allocation of special agents should be accomplished in a manner that is consistent with both the compliance strategy and the most significant areas of noncompliance.

### **Non-Critical Action Items**

1. The newly implemented centralized hiring plan should include the special agent's office of preference.
2. Division Counsel should review all search warrants when a special agent is the affiant (one who makes an affidavit).
3. The CI function should formally adopt a policy prohibiting high-risk entries<sup>3</sup> and include the policy in the IRM.
4. CI management should perform regular and thorough reviews of the unique enforcement problems facing each district.
5. The CI function should set the performance requirements high enough so that promotions to Grade 13 are not merely pro forma, as perceived by special agents.
6. The CI function should implement a policy requiring special agents and all other CI employees to immediately report if they are arrested, charged with a crime, or convicted of a crime.
7. Failure to immediately report being arrested, charged with a crime, or convicted of a crime, by itself, should constitute actionable misconduct.
8. Peer reviews should be performed more frequently than once every 3 years.
9. The 6-month follow-up on problems identified by the Peer Reviews will be the responsibility of the Peer Review Staff.
10. The CI function should further develop and maintain expertise in the area of computer forensics.
11. The Chief, CI, should assess whether sufficient resources are deployed for developing computer forensics technology and training.
12. The IRM should accurately reflect current CI policy, and the IRS should update the IRM regularly in order to provide clear guidance to all CI employees.
13. The forensic laboratory should pursue accreditation with the American Society for Crime Lab Directors.

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<sup>3</sup> High-risk entries are those entries into locations where potential physical harm to the agent is present.

# The Criminal Investigation Function Needs to Improve Its Oversight During Implementation of the Webster Report Recommendations

## Appendix V

### Management's Response to the Draft Report



Criminal Investigation

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

JUN 11 2001

6/12/01 BB

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM:   
Mark E. Matthews  
Chief, Criminal Investigation

SUBJECT: Response To Draft Audit Report-- Criminal Investigation  
Needs to Improve the Oversight of the Implementation of  
Webster Report Recommendations  
(Audit # 20010038 )

I appreciate the opportunity to express the views of Criminal Investigation (CI) on the above report and fully agree that implementing the 25 Webster Report recommendations is crucial to the success of CI. We have worked diligently to implement the recommendations and have implemented all 25 Webster Report recommendations. Many require continual refinement, and others require continuous monitoring as part of our ongoing management processes. Finally, some of the recommendations required modification as a result of the changes in the Internal Revenue Service (IRS) structure and strategic planning processes. The CI Modernization executive will continue to monitor the impact of the 25 Webster Report recommendations for further improvement of the recommendations. Criminal Investigation considers this a means to continuous improvement, not an end.

While implementing the Webster Report 25 core recommendations, CI considered the items in the body of the report as additional suggestions to be evaluated for potential integration in the core recommendations. We discovered in some cases that we did not need to incorporate each item to implement the recommendation it supported. We also found that due to the ongoing changes taking place in the IRS and specifically CI as a result of the modernization effort, a number of the action items were no longer appropriate. In addition, some items were not specific actions to be completed but continuing processes to become part of our management practices within CI.

As for search warrants, we fully support any suggestions that will improve our oversight of this sensitive investigative tool. We recognize the execution of a search warrant is one of the most intrusive investigative steps a law enforcement agency can take. Criminal Investigation took action in this area toward the end of your fieldwork that should be noted. We enlisted Chief Counsel, Criminal Tax (CT) to play an active role in not only the legal review but also the policy review of all search warrants. Criminal Tax



## The Criminal Investigation Function Needs to Improve Its Oversight During Implementation of the Webster Report Recommendations

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attorneys review search warrant applications, including justification as the least intrusive method, before the applications go to the Special Agents in Charge (SAC) for approval.

In addition, we asked the Directors of Field Operations (DFOs) to personally review search warrants during their visits to their field offices on a temporary basis. The purpose of these reviews is to evaluate the effectiveness of the new search warrant application review procedures.

Our comments on the three specific recommendations in this report are as follows:

### IDENTITY OF RECOMMENDATION #1

The Chief, CI needs to increase executive oversight on open action items to ensure their timely completion.

### ASSESSMENT OF CAUSE(S)

At the time of this audit, CI had just stood up and had not yet implemented all of its processes. We have since developed and implemented the necessary processes. The CI Modernization executive is focusing attention on the recommendations instead of the action items since a number of the actions items are no longer required to implement the recommendations. Although we have implemented all 25 recommendations, the Modernization executive will continue oversight responsibility to ensure we achieve the desired results and complete all of the items in the body of the report that are still appropriate. The Modernization executive reports directly to the Chief, CI to guarantee appropriate management attention throughout CI.

### CORRECTIVE ACTION (S)

We have completed this recommendation. However, the CI Modernization executive will continue to monitor the remaining items to ensure we implement all appropriate items.

### IMPLEMENTATION DATE

March, 2001

### RESPONSIBLE OFFICIAL(S)

None

### CORRECTIVE ACTION(S) MONITORING PLAN

None

### IDENTITY OF RECOMMENDATION #2

The Chief, CI, should establish a process to monitor the effectiveness of the proposed corrective actions taken in response to the Webster Report recommendations.

### ASSESSMENT OF CAUSE(S)

At the time of this audit, CI had just stood up and had not yet implemented all of its processes. Since these recommendations are basic to the successful operation of CI, evaluating the effectiveness of the recommendations is part of CI's ongoing management process. For example, the first recommendation was:

## **The Criminal Investigation Function Needs to Improve Its Oversight During Implementation of the Webster Report Recommendations**

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One of the first issues that the Commissioner must address once a compliance strategy has been developed is the declining pool of Special Agents.

We implemented this recommendation by increased funding by the Commissioner for CI. Criminal Investigation has initiated an aggressive hiring program supported by a national advertising campaign. We closely monitor the results of these activities and report to the Commissioner on a monthly and quarterly basis as part of the Business Performance Review.

This recommendation, like a majority of the other recommendations, has become a basic part of the CI management process and does not need to be monitored by a separate, distinct process.

### **CORRECTIVE ACTION (S)**

We have completed this recommendation.

### **IMPLEMENTATION DATE**

March, 2001

### **RESPONSIBLE OFFICIAL(S)**

None

### **IDENTITY OF RECOMMENDATION #3**

The Chief, CI, should require periodic reviews to ensure the consistent preparation of special agents' search warrant and risk assessment documentation. Also, these reviews should ensure that appropriate documentation is maintained in the investigative administrative files.

### **ASSESSMENT OF CAUSE(S)**

Due to the reorganization of CI and CT, we had not yet developed and implemented all operating procedures relating to management oversight of search warrants before the conclusion of the audit field work. Because we recognize the intrusive nature of search warrants and fully agree with your recommendation, both CI and CT have designed and implemented their new management processes requiring detailed reviews and oversight of search warrants.

Criminal Tax reviews all applications for search warrants before the SAC reviews the search warrant. The CT review is for both legal and policy requirements. The applications must document to the SAC's satisfaction why the search is the least intrusive means necessary to obtain the evidence. Criminal Tax documents all reviews in the case administrative file.

The revised CI Peer Review Program started in February 2001 and is reviewing the search warrant files from March 1, 2000 through the date of the field office peer review. In addition to their normal follow-up reviews of the peer reviews at six and 18 months intervals, the DFOs are conducting reviews of all search warrants whenever they visit a field office.

## **The Criminal Investigation Function Needs to Improve Its Oversight During Implementation of the Webster Report Recommendations**

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### **CORRECTIVE ACTION (S)**

No additional corrective actions are necessary due to the implementation of standardized search warrant review procedures involving both CI and CT. The recommendation is further supported by the personal reviews of the DFOs during field office visits.

### **IMPLEMENTATION DATE**

February, 2001

### **RESPONSIBLE OFFICIAL(S)**

None

### **CORRECTIVE ACTION(S) MONITORING PLAN**

None

If you have any questions, please contact me at (202) 622-3200 or Tyrone Barney, Director of Strategy, at (202) 622-5876.